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BRANDT GOLDSTEIN

## Lost in Translation? Some Brief Notes on Writing About Law for the Layperson

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## INTRODUCTION

Any discussion on the future of writing about the law would be incomplete without considering work on legal subjects written to reach the general public. And it is a public that needs reaching. Despite law's pervasive impact on our lives, much about the legal world remains a mystery to non-lawyers—a classic example being a judicial ruling that the media describes as having been decided on a “technicality.” The fact that journalists often fall back on such non-explanations is not surprising. Given that 55 percent of the adults in a *Washington Post* survey could not name a single Supreme Court justice,<sup>1</sup> one can hardly expect the public to understand much about subject matter jurisdiction, venue, or the standing doctrine.

Yet it is surely safe to say that members of the public ought to know more about the law if they are to participate as fully informed citizens in our democracy, whether the issue is a judicial confirmation battle, the recent struggle over immigration reform, or the Bush administration's controversial policies on the detention and interrogation of terrorist suspects. It is also safe to say, despite the *Washington Post* survey mentioned above, that many Americans *want* to understand more about the law, as evidenced by everything from the continuing popularity of television dramas like *Law & Order* to the burgeoning readership of the legal blogosphere and the vibrant legal discussion boards of *Slate* and the *Wall Street Journal's* online edition.<sup>2</sup>

With these considerations in mind, the Program in Law & Journalism at New York Law School and the *New York Law School Law Review* co-hosted a panel of distinguished speakers in February 2007, to explore the challenge of writing about law for the general public. The panel, part of the school's day-long symposium on the challenges and future of writing about the law, featured journalists Adam Cohen of the *New York Times*, Jamie Heller of the *Wall Street Journal*, and Dahlia Lithwick of *Slate* and the *Washington Post*, as well as writer/producer Richard Sweren of the long-running television series *Law & Order*.<sup>3</sup> While a number of issues and themes came to the fore, one that drew particular attention was the notion that legal journalism requires a process of *translation*, described by the *American Heritage Dictionary* as “[t]o render in another language” and “[t]o put into simpler terms; to explain or interpret.”<sup>4</sup>

This piece will briefly map out, and at times elaborate on, the panel's thoughts and concerns about the idea of translation in legal writing for the public. I do not aim to present a rigorous, in-depth argument, but instead to offer

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1. Richard Morin, *Unconventional Wisdom*, WASH. POST, Oct. 8, 1995, at C5.
  2. An online magazine of commentary founded by Michael Kinsley and now owned by the *Washington Post*, *Slate* ([www.slate.com](http://www.slate.com)) publishes the work of both established writers and promising new voices. The *Wall Street Journal's* online edition can be found at [www.wsj.com](http://www.wsj.com).
  3. Unless otherwise noted, statements by the panel participants in this article were made at the panel discussion on February 16, 2007, at New York Law School. A streaming webcast of that discussion can be viewed in its entirety at <http://www.nyls.edu/pages/3318.asp>.
  4. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1902 (3d ed. 1992).

what might be considered “substantive minutes” of the panel’s conversation, using translation as an organizing principle (to the extent that a free-flowing panel discussion can be organized in such fashion). Part I sketches out, in the most preliminary way, the concept of translation in legal journalism. It then explores some of the challenges associated with this process of translation, including the problems of limited space and political spin, as well as the pressures of deadlines, “evergreen” subjects, and the so-called “lowest common denominator.” Despite these problems and pressures, Part II suggests some reasons for optimism about the future of legal journalism.

#### I. “TRANSLATION” IN LEGAL JOURNALISM

To introduce one of the central problems faced by anyone writing about law for the layperson, consider this comment last year by Supreme Court reporter Tony Mauro:

[A] large number of [Supreme Court opinions]—including some of the most important ones—[are] nearly incomprehensible to many members of the public. That is not to disparage the public, but rather to state the obvious: that the law has reached a level of complexity that puts many decisions beyond the reach of lay people (and many lawyers too). As Justice Antonin Scalia once famously put it, “That is why the University of Chicago Law Review is not sold at 7-Eleven.”<sup>5</sup>

Few would argue with this claim about the inaccessibility of the law, be it a Supreme Court opinion, a ruling by the National Labor Relations Board, or the legislative history behind an amendment to an appropriations bill. Simply put, the law is a different language—a fact that I was reminded of recently when, as an experiment, I asked a former White House speechwriter to try to decode *Erie Railroad v. Tompkins*.<sup>6</sup> The speechwriter is highly educated, well versed in politics, policy, and history, and an insightful and sensitive reader. But it should come as no surprise that when I asked him to state the holding of the case, he was flummoxed. Indeed, if I were to modify any part of Mauro’s assertion about the law’s inaccessibility, it would be the suggestion that law is more complex today than it was, say, seventy years ago, when *Erie* was decided. As the well-worn story goes, the day the Supreme Court issued the *Erie* opinion, every newspaper in New York overlooked the significance of the case.<sup>7</sup>

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5. Tony Mauro, *The Chief and Us: Chief Justice William Rehnquist, The News Media, and the Need for Dialogue between Judges and Journalists*, 56 SYRACUSE L. REV. 407, 411 (2006) (quoting Supreme Court Justice Antonin Scalia, Francis Boyer Awards Lecture at the American Enterprise Institute Policy Conference (Dec. 6, 1989)).

6. 304 U.S. 64 (1938).

7. Linda Greenhouse, *Telling the Court’s Story: Justice and Journalism at the Supreme Court*, 105 YALE L.J. 1537, 1549–50 (1996). Given the high level of expertise among the journalists currently covering the Supreme Court, that oversight seems unlikely to occur today.

A longstanding challenge for those writing on law for the lay public, then, lies in making the language of the law, and the law's concepts, procedures, and rituals, more accessible. To reiterate, what is required is an act of translation: "[T]o put into simpler terms; explain or interpret."<sup>8</sup> And so the writer struggles to take doctrines, principles, and processes locked in the technical and often plodding nomenclature of the law, and explain them in clear, jargon-free, and (hopefully), absorbing prose. This translation can come in many forms, such as a news article on a class-action settlement, an op-ed criticizing a presidential pardon, or a feature story on the reasoning of a Justice Department legal memorandum. But as the panel participants observed, there are many problems and pitfalls associated with the translation enterprise, and it is to those concerns that I now turn.

*A. The Need for Brevity and the Task of Distillation*

One of the primary translation-related problems discussed by the panelists is the very practical issue of brevity. Legal decisions, briefs, and hearing transcripts can drag on for many dozens of pages (or longer), but those working in journalism must be ruthlessly concise. The journalist thus faces the difficult task of deciding what to prune away when simplifying a legal subject—an issue highlighted by panelist Adam Cohen. Cohen writes an occasional one thousand word column for the *New York Times* on important legal trends and decisions. One recent piece, for example, focused on the respective war powers of the president and Congress under the Constitution, and argued that the Bush administration has not duly recognized the war powers granted to Congress—an argument that invoked several provisions of the Constitution as well as a pair of aged Supreme Court decisions.<sup>9</sup> In crafting ambitious pieces in so limited a space, Cohen inevitably must leave something—many things—out of his argument. The result of such pruning, he reports, can be a fusillade of criticism (often on Internet message boards) about his failure to address this or that allegedly crucial fact or argument.

Among the assumptions underlying such criticism are that a journalist is obliged to faithfully reproduce all the possible arguments that might bear on an issue, and further, that any failure to do so misleads the audience. But, as Cohen noted during the panel discussion, for the sake of coherence there must always be a measure of distillation—as much when writing *within* the law as when writing about it.<sup>10</sup> Of course, the imperative of distillation does not relieve the reporter or op-ed writer of the obligation to present things as accurately as possible. But as Cohen stressed to the audience, the very essence of a reporter's or op-ed

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8. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, *supra* note 4, at 1902.

9. See Adam Cohen, *Congress, the Constitution and War: The Limits on Presidential Power*, N.Y. TIMES, Jan. 29, 2007, at A18.

10. To illustrate his point, Cohen recalled learning in law school that even judicial opinions were far from the comprehensive treatments of the law that he had assumed them to be.

writer's work is to boil a subject down and, within the space available, to draw conclusions about it as best as he or she can.

Naturally, distillation can vary in sensitivity and sophistication, but even the most talented journalists face an uphill battle in trying to convey the full significance of their subject to a lay audience. Consider, for instance, news reports of Supreme Court decisions. They are almost always exceedingly brief, providing at most the context of the case, a highly simplified account of the holding, and perhaps a few short comments about its potential consequences. But often, the crucial issue of the opinion's reasoning—the intricate matter of how the justices arrived at their decision—receives little or no coverage at all. The fear, evidently, is that such material is simply not what the general public wants to read. As Dahlia Lithwick told the symposium audience, the mentality of a newspaper editorial staff can often be: “God forbid if [the writers] actually use a line from a Supreme Court opinion” in an attempt to illuminate the court's reasoning. Yet what is a legal decision if not an effort to craft persuasive reasons for a particular outcome, based on close readings of past cases, statutes, and other sources of law? And isn't that the core of what should be reported? The Court's legitimacy, after all, rests significantly on its ability to persuade, but without critical reporting about the reasoning of the Court's opinions, how can the average citizen meaningfully assess what the justices are doing?

A compelling example of this problem involves the Supreme Court's 1993 decision in *Sale v. Haitian Centers Council*.<sup>11</sup> *Sale* was a high-profile case that upheld the White House policy of intercepting Haitian refugees on the high seas and returning them to Haiti without determining whether they might qualify for political asylum.<sup>12</sup> At the heart of *Sale* was the interpretation of a federal statute, the Refugee Act of 1980, as well as a similarly worded international treaty.<sup>13</sup> The statute provided in part that “the Attorney General shall not deport or return any alien . . . to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of . . . political opinion.”<sup>14</sup> The crux of the decision was the Court's interpretation of this statute, and in particular, the Court's reading of the word “return” not to include the act of returning refugees found on the open ocean.<sup>15</sup> This peculiar interpretation was at odds with not only the purpose and spirit of the statute, but also the widely influential plain language approach to statutory interpretation so

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11. 509 U.S. 155 (1993).

12. I am particularly familiar with the case. See BRANDT GOLDSTEIN, *STORMING THE COURT* (2005) (providing a narrative account of *Sale*).

13. *Sale*, 509 U.S. at 176. See generally Immigration and Nationality Act, § 243(h)(1) (1952), amended by Refugee Act of 1980, 8 U.S.C. § 1253(h)(1) (1994); Convention Relating to the Status of Refugees, art. 33, adopted Jul. 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150.

14. Immigration and Nationality Act, § 243(h)(1), 8 U.S.C. § 1253(h)(1).

15. *Sale*, 509 U.S. at 179–87.

energetically expounded by Justice Scalia in the years leading up to the *Sale* decision.<sup>16</sup>

But the vast majority of news stories about the case barely addressed the Court's reasoning<sup>17</sup>—a critical oversight because the central feature of the opinion was its concern with protecting presidential authority to chart policy on Haitian political refugees in the face of a congressional statute with a clear and contrary directive on the issue.<sup>18</sup> True, a few news articles did venture brief explanations of the opinion's unconvincing statutory analysis—most notably, Linda Greenhouse's *New York Times* article,<sup>19</sup> which was accompanied by an excerpt of the opinion itself.<sup>20</sup> And while this “untranslated” material was not easy reading, it did offer a feel for the Court's logic, and thus a glimpse of the real subtext of the Haitian decision.

The problem is that by delving too deeply into the nitty gritty of an opinion, a journalist risks losing all but the most committed lay readers—particularly if they are asked to read the actual text of the case. For instance, in the most informal of polls, I asked a dozen non-lawyer readers of the *New York Times* if they ever read the excerpts from Supreme Court opinions that appear in that paper. The answers ranged from “rarely” to “never.” Anecdotal as this is, it certainly correlated with my expectations (and those of some of my colleagues), and it highlights the difficult balance that a journalist must strike between accessibility on the one hand and rigor and authority on the other.

### B. *Countering the Spin of the Political Arena*

A second problem in translation identified by the panel participants involves the challenge of countering political spin on legal issues. In this context, we might think of spin as meaning an act of incomplete or misleading translation. Take, for instance, a recent piece by Adam Cohen on the idea of “judicial activism.”<sup>21</sup> That term is traditionally used by conservatives to chastise liberal judges for allegedly creating new constitutional rights that are congruent with those judges' personal political preferences but supposedly unsupported by the text of the

16. See, e.g., *INS v. Cardoza-Fonseca*, 480 U.S. 421, 452–55 (1987) (Scalia, J., concurring) (describing the view that if the language of a statute is clear, that language must be given effect in absence of a patent absurdity); see also GOLDSTEIN, *supra* note 12, at 224–25 (arguing that Scalia claims to focus on the language of the statute itself and relies on words' ordinary meanings).

17. See, e.g., Dick Lehr, *Court Backs the Forced Returning of Haitians*, BOSTON GLOBE, June 22, 1993, at 1; Andres Viglucci & Paul Anderson, *Returning of Haitians is Upheld; No Right to Hearings at Sea, Justices Rule*, MIAMI HERALD, June 22, 1993, at 1A.

18. *Sale*, 509 U.S. at 187; see also GOLDSTEIN, *supra* note 12, at 291–92.

19. Linda Greenhouse, *High Court Backs Policy of Halting Haitian Refugees*, N.Y. TIMES, June 22, 1993, at A1.

20. *Excerpts from High Court Decision Upholding Policy on Haitian Refugees*, N.Y. TIMES, June 22, 1993, A18.

21. Adam Cohen, *Is John Roberts Too Much of a Judicial Activist?* N.Y. TIMES, Aug. 27, 2005, at A12.

Constitution. Cohen argues, however, that “there are a growing number of activist conservative judges who are intent on using [aggressively right-wing] readings of the Constitution to take away [legitimately grounded] rights.”<sup>22</sup> His point is that the derogatory term “judicial activist” can arguably be applied to a judge on either end of the political spectrum, but that conservatives’ persistent use of the term may have convinced non-lawyers that only liberal jurists are guilty of straying from the constitutional text.<sup>23</sup>

During the panel discussion, Cohen explained that his piece sprung in part from a concern that at times, journalists simply quote politicians’ comments on legal issues without properly investigating those comments. His paradigmatic example was, not surprisingly, news reports about conservative presidential candidates who declare they will not appoint any “judicial activists.” The danger of stories that simply repeat this sort of spin without deeper analysis, Cohen believes, is that readers may end up substantially misinformed about the underlying legal issues. Lithwick echoed Cohen’s concerns, referring the panel audience to the coverage of the Military Commissions Act of 2006, which created a new system of tribunals to try Guantanamo Bay detainees.<sup>24</sup> Many newspapers, she said, merely repeated the widespread assertion that the legislation was a “compromise” between President Bush and congressional critics.<sup>25</sup> Such reports created the misimpression that the Bush administration had backed off of some of its demands with respect to the tribunals’ structure and procedure. In the estimation of Lithwick and many legal scholars, however, the act was anything but a compromise, for the White House obtained just about everything it wanted in the final statute.<sup>26</sup>

*C. The Pressures of Time, Evergreen Topics, and the Lowest Common Denominator*

In addition to the problems of political spin and space constraints, the panelists identified a trio of other pressures that combine to make legal journalism, and the enterprise of translation, much more difficult. The first is the obvious problem of time pressure. As often as it is repeated, it bears recalling that journalists work under demanding conditions to get their stories in on deadline—with sub-

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22. *Id.*

23. *Id.*

24. The Military Commissions Act of 2006, 10 U.S.C. § 948(a) (2006).

25. See, e.g., James Rosen, *Appraisals Vary on Detainee Act*, LEXINGTON HERALD-LEADER, Oct. 22, 2006, at A1. But see Ron Hutcheson, *Detainee Law Quickly Put to Use*, NEWS & OBSERVER, Oct. 18, 2006, at A1 (arguing that President Bush emerged as the clear winner even though the bill was presented as a compromise). “The president has gotten everything he wants and more,” said Jeffrey Addicott, a former Army lawyer . . . .” *Id.*

26. Dahlia Lithwick, *Crisis of Confidence: The Latest Terror Rulings Suggests that the Courts Do Pretty Well in a Crisis*, SLATE, June 12, 2007, <http://www.slate.com/id/2168248>.

tlety and nuance, the essence of any legal argument, serving as frequent casualties. According to panelist Jamie Heller of the *Wall Street Journal*, the paramount need is to ensure the work is both timely and fundamentally accurate—a requirement that is all the more challenging, she notes, when courts release complex opinions at the end of the day (and thus close to many newspaper deadlines). Indeed, if trying to translate the complex language of a court opinion is a taxing enterprise under ordinary circumstances, Heller emphasizes that it becomes exponentially more difficult under heavy time pressure. In that regard, there is no more trying time of year than the end-of-the-term rush for the Supreme Court, which sometimes issues several opinions in a single day in late June. Former Chief Justice Rehnquist once suggested that newspapers could simply wait an extra day, if they felt they needed it, before reporting on a newly issued decision.<sup>27</sup> But of course, no major daily media outlet could afford to function this way.

Heller also expressed concern with another longstanding pressure: breathing new life into the coverage of issues the *Wall Street Journal* must continue to report on because the *Journal's* readers want and expect it. Among the so-called “evergreen” topics Heller identified were dissatisfaction among law firm associates and the debate over whether law is a business or a profession. The issue here, though, is less one of translation than of variation: how many different ways can a journalist write about, say, law firm associate pay? In the case of such a hot-button subject, the answer might be that it almost doesn't matter. Given that salaries continues to rise but overall associate satisfaction does not, there are plenty of stories to tell and plenty of people who will be interested in reading them, even if the reports at times resemble coverage from years past.<sup>28</sup>

A final form of pressure that the panelists found particularly troubling was what Dahlia Lithwick called the “appeal to the lowest common denominator.” As Lithwick explained, every day at *Slate* she must decide whether to write a serious piece about, say, an important court ruling, or a lighter piece on, for instance, the celebrity murder trial du jour. Lithwick enjoys the freedom to write either one, and she usually chooses the more substantive option. But she revealed with consternation that her occasional celebrity-oriented pieces receive a much greater readership and are far more likely to seize the attention of the evening cable television shows. “There is,” she glumly told the panel audience, “an insatiable demand for this [kind of material].” Though there might be no imminent danger that the *New York Times* or the *Washington Post* will, in a battle for tabloid-oriented readers, stop covering the Supreme Court, there seems to be a legitimate

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27. Greenhouse, *supra* note 7, at 1558.

28. While writing this piece, in fact, I came across a *New York Times* op-ed piece arguing in favor of the \$250,000 bonuses that major law firms now pay former Supreme Court clerks to join their ranks. See David Lat, Op-Ed, *The Supreme Court's Bonus Babies*, N.Y. TIMES, June 18, 2007, at A19. Mr. Lat's piece attracted great attention on Internet message boards.

concern underlying Lithwick's hyperbolic question: "Do I want to write a piece that reaches my dad and two law professors, or one that will end up on TV?"

What is particularly problematic about most law-related stories for a celebrity age is that they generally have little or nothing to do with law and everything to do with celebrities.<sup>29</sup> The typical piece about Paris Hilton's recent time in jail is not (at least intentionally) likely to tell us much of significance about our legal system, and many observers might suggest that it will tell us nothing at all. In any event, such stories rarely raise the issues of translation discussed by the panel. Yet even in serious legal writing for the public, the pressure to appeal to a broad readership remains, with journalist's correlative worry about the need to "dumb down" their work. In that connection, I will conclude with a few thoughts about how the serious work of legal journalism, of meaningful translation, can continue to attract a significant audience.

## II. THE FUTURE OF LEGAL JOURNALISM: SOME REASONS FOR OPTIMISM

Given the time constraints on the panel, the participants had only a limited opportunity to discuss the way forward. Nevertheless, some remarks during the discussion, as well as a broader consideration of some of the panel participants' work, together point toward how serious legal journalism might thrive in the future—particularly in light of the aforementioned pressure of the lowest common denominator.<sup>30</sup> One fresh approach to covering law that is fast gaining currency is, of course, the legal blog.<sup>31</sup> Many legal blogs use refreshingly readable, informal prose and provide punchy, quick-response commentary that is accessible to the legal community and lay readers alike. And legal blog readership seems to be on the rise. SCOTUSblog, for instance, announced on June 28, 2007, that for the first time it was about to surpass one hundred thousand page views in a day, and was on track to have its first week of two hundred and fifty thousand page views.<sup>32</sup> Those are not negligible numbers for a site devoted to the serious analysis of Supreme Court jurisprudence.

The rise of legal blogs such as SCOTUSblog, Balkinization,<sup>33</sup> and the Volokh Conspiracy<sup>34</sup> serve as one possible solution to the problem of brevity and the need to counter the political spin of legal concepts. With growing numbers of lawyers and legal scholars commenting on breaking legal issues, the blogosphere

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29. It is worth noting that Lithwick's own celebrity-oriented pieces tend to be far more substantive than most. See, e.g., Dalia Lithwick, *To Rest In Peace*, SLATE, Aug. 17, 2006, <http://www.slate.com/id/2147947>.

30. Of course, major newspapers and newsmagazines continue to devote considerable attention to legal issues, and the *New York Times*, *Wall Street Journal*, *Washington Post*, *New Yorker*, *Time*, *Atlantic* and so forth generally still enjoy large readerships, particularly if their online readership is taken into account.

31. Other alternatives include podcasts and video blogs, both of which are rising in popularity.

32. Posting of Tom Goldstein to SCOTUSBlog, <http://www.scotusblog.com/wp/uncategorized/100,000/>.

33. Balkinization, <http://balkin.blogspot.com/> (last visited Jan. 8, 2008).

34. The Volokh Conspiracy, <http://volokh.com/> (last visited Jan. 8, 2008).

provides more sophisticated, in-depth analysis of the law than is possible even in a long-form magazine article.<sup>35</sup> Take, for example, the Supreme Court's reversal of course on June 29, 2007, when it unexpectedly announced it would hear the Guantanamo Bay detainees' challenges to the Military Commissions Act.<sup>36</sup> Before the end of the afternoon, SCOTUSblog alone had posted more information about the case than most newspapers provided even the next day. As for blogs' potential to counter political spin, consider Lithwick's discussion of whether the Military Commissions Act was a "compromise."<sup>37</sup> In December 2006, the popular legal blog Balkinization put up an organized guide to all posts by its contributors on national security subjects.<sup>38</sup> Included were a whopping forty-nine pieces on the Military Commissions Act, a number of which made clear that the legislation gave the Bush administration essentially everything that it had sought.<sup>39</sup>

The punchy style of many blogs suggests another way that legal journalism can continue to thrive. Until recently, much legal journalism seems to have been limited to a certain kind of sober, serious tone that evidently was considered the only appropriate approach to the subject matter. But in the last decade or so, an alternative style of legal journalism, pioneered in significant part by Dahlia Lithwick at *Slate*, has developed—a knowing, witty, and often ironic approach, even when the subject itself is weighty. In describing a rare oral argument in which Justices Antonin Scalia and John Paul Stevens actually seemed to agree, she wrote: “[W]hile these two formidable humans are almost always on opposing sides of an issue, when they conspire to use their superpowers toward the same ends, it’s like watching worlds collide. Batman teams up with the Penguin.”<sup>40</sup> Lithwick’s entertaining mixture of high and low should not be mistaken for a lack of rigor. She enjoys a large readership among the Supreme Court bar, and it is a poorly kept secret that there are avid readers of her work inside the Court itself. Moreover, she has inspired other serious legal writers to adopt a more freewheeling style at times. Perhaps most notably, former acting Solicitor Gen-

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35. And since journalists now often cite some of the more authoritative legal bloggers in their stories, it is that much easier for non-lawyers to locate these alternative sources of legal discussion.

36. The Supreme Court consolidated *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007), cert. granted 75 U.S.L.W. 3705, 75 U.S.L.W. 3707 (U.S. June 29, 2007) (No. 06-1195) and *Al Odah v. U.S.*, 321 F.3d 1134 (D.C. Cir. 2003), cert. granted, 75 U.S.L.W. 3483, 76 U.S.L.W. 3018 (U.S. June 29, 2007) (No. 06-1196). The D.C. Circuit ruled in *Boumediene* and *Al Odah* that the Military Commissions Act of 2006 stripped detainees of any habeas rights they had to challenge their detention at Guantanamo.

37. See *supra* note 26 and accompanying text.

38. Jack Balkin, *The Anti-Torture Memos*, BALKINIZATION, Dec. 22, 2006, <http://balkin.blogspot.com/2006/12/anti-torture-memos.html>.

39. *Id.*

40. Dahlia Lithwick, *Batman and the Penguin Eat Blakeley*, SLATE, Oct. 4, 2004, <http://www.slate.com/id/2107754/>.

eral of the United States Walter Dellinger recently quoted a *Sesame Street* song in one of his own *Slate* contributions about the Supreme Court.<sup>41</sup>

Yet another way that legal journalism can continue to thrive is through the approach of narrative: telling a good story about the law. The legal thriller never seems to go out of style, of course, and even law professors are joining the ranks of Scott Turow and John Grisham.<sup>42</sup> But I have in mind nonfiction narratives about the law—books such as *A Civil Action*<sup>43</sup> and *The Informant*<sup>44</sup> and the law-related narratives that often appear in publications such as the *New Yorker*<sup>45</sup> and the *New York Times Magazine*.<sup>46</sup> The point here is that general readers may well be willing to invest more time understanding important legal issues if, in the process, they are carried along by the momentum of a story. *A Civil Action*, for instance, asks lay readers to grapple with Rule 11, the complexities of the discovery process, and the thicket of problems posed by jury instructions.<sup>47</sup> But the book presents these issues as part of a legal battle pitting a flawed but well-meaning plaintiff's lawyer against a cagey defense attorney in a case alleging that big corporations contaminated a town's drinking water, leading to the deaths of several children.<sup>48</sup> The book, of course, was a huge bestseller.

Finally, a less substantive form of legal narrative, but one that surely reaches an even broader audience, is the law-related television drama that deals with current legal issues. Such shows obviously do not provide, nor do they purport to provide, authoritative treatment of the issues they raise. But one thing cannot be denied: they are enormously popular and can help provoke debate. Panelist Richard Sweren, a writer and producer on the television show *Law & Order*, explained to the panel audience that an episode often begins with a particular idea or concern about the law, with the writers then seeking a compelling and effective narrative to explore the issue. Not surprisingly, *Law & Order* has addressed both terrorism and torture in recent years, and perhaps even more influentially, the Fox television network show *24* has repeatedly featured its protagonist, Jack Bauer, torturing terrorists to extract information that will prevent

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41. Walter Dellinger, *Everything Conservatives Should Abhor*, SLATE, June 29, 2007, <http://www.slate.com/id/2168856/>.

42. See, e.g., STEPHEN CARTER, *NEW ENGLAND WHITE* (2007); KERMIT ROOSEVELT, *IN THE SHADOW OF THE LAW* (Picador 2006) (2005); JED RUBENFELD, *THE INTERPRETATION OF MURDER* (Picador 2007) (2006).

43. JONATHAN HARR, *A CIVIL ACTION* (Vintage Books 1996) (1995).

44. KURT EICHENWALD, *THE INFORMANT* (2000).

45. See, e.g., Jane Mayer, *The Black Sites: A Rare Look Inside the CIA's Secret Interrogation Program*, NEW YORKER, Aug. 13, 2007, at 44.

46. See, e.g., Jeffrey Rosen, *The Right To Spend*, N.Y. TIMES, July 8, 2007, § 6 (Magazine), at 11.

47. See HARR, *supra* note 43.

48. See *id.*

a future attack.<sup>49</sup> Demonstrating the broad impact of *24*, none other than Justice Scalia recently seemed to endorse Bauer's brutal methods at a conference on national security.<sup>50</sup> The response to Justice Scalia was animated and, at times outraged, spurring continued discussion about whether torture is ever legitimate.<sup>51</sup> The suggestion here is not that fictional television shows can or should substitute for serious legal journalism; only that, to the extent that such shows lead to serious consideration of important legal issues, they may make their own contribution.

### CONCLUSION

Whether in books, magazines, newspapers, Internet-based journals, blogs, or other forms, writing about the law for the general public will surely go on—and, hopefully, continue to thrive. Hopefully, too, there will be future symposia devoted to the topic, giving journalists, academics, and others the opportunity to further explore the wide-ranging issues posed by the practice of legal journalism and the project of translation. For it is not just the public that depends upon writers and editors devoted to translating law for the layperson. It is, too, the legal profession. As a Supreme Court reporter recently noted, judges work “at the outer margins of public attention. That is not healthy for any democratic institution, even one like the judiciary that has been populated mainly by honest and dedicated public servants.”<sup>52</sup> Nor is it healthy for lawyers to function in a world composed only of courts and clients. Like the legitimacy of the law itself, the legitimacy of the legal profession is founded on a broad social consensus—one that can only remain intact if those who give their consent are truly informed.

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49. See Jane Mayer, *Whatever It Takes: The Politics of the Man Behind "24"*, NEW YORKER, Feb. 19, 2007, at 66.

50. Rush and Malloy, *Scalia a Fan of '24' from the Gitmo*, [http://www.nydailynews.com/gossip/rush\\_molloy/2007/06/26/2007-0626\\_scalia\\_a\\_fan\\_of\\_24\\_from\\_the\\_gitmo.html](http://www.nydailynews.com/gossip/rush_molloy/2007/06/26/2007-0626_scalia_a_fan_of_24_from_the_gitmo.html) (June 26 2007, 12:58 EST).

51. Posting of Peter Lattman to the Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2007/06/20/justice-scalia-hearts-jack-bauer>, (June 20, 2007, 11:37 EST).

52. Mauro, *supra* note 5, at 412.